

Application Number 09/733,302
Response to Office Action mailed December 14, 2007

REMARKS

This amendment is responsive to the Office Action dated December 14, 2007. By this Amendment, Applicant has amended claims 1-6, 8, 10, 11, 13-16, 18, 20, 21 and 24-28, and canceled claims 29-31. Claims 22, 23 and 32-41 were previously canceled. Claims 1-21 and 24-28 are pending. Reconsideration of the Application in light of the above amendments and following remarks is respectfully requested.

Claim Rejection Under 35 U.S.C. § 102

In the Office Action, the Examiner rejected claims 1-21 and 24-31 under 35 U.S.C. 102(e) as being anticipated by Landsberger (US 6,113,599).

Applicant respectfully submits that Landsberger fails to disclose each and every feature recited in amended independent claims 1 and 25, as well dependent claims 2-21, 24 and 26-28, as required by 35 U.S.C. 102(e) and provides no teaching that would have suggested the desirability of modification to include such features.

With respect to independent claim 1, for example, Landsberger does not teach or suggest an expansion means ... for disengaging from the first transmitting means and the second transmitting means after the distraction is complete as recited in amended independent claim 1. Rather, Landsberger teaches an implantable device for lengthening of the mandible by distraction osteogenesis in which, once the desired distraction is obtained, the entire device remains implanted during the period of bone consolidation (approximately two to four months) before it is surgically removed (see, e.g., Landsberger at col. 6, lines 42-48). Landsberger does not disclose or suggest that its telescopic drive shafts (indicated by reference numerals 30, 130 and 132, for example) are configured to be disengaged after the distraction is complete, as recited in Applicants' claim 1. In fact, Landsberger teaches away from the claimed invention by expressly stating that the entire device remains implanted after the desired distraction is obtained and during the period of bone consolidation.

With respect to independent claim 25, for example, Landsberger does not teach or suggest disengaging the expansion means from the first transmitting means and the second transmitting means after the distraction is complete as recited in amended independent claim 25. As discussed above, Landsberger expressly teaches that the entire device remains implanted after the

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desired distraction is obtained and during the period of bone consolidation. Landsberger therefore can not and does not teach or suggest disengaging the expansion means after the distraction is complete as recited in independent claim 25.

Claims 2-21 and 24 are dependent on claim 1 and include all of the limitations thereof, and are therefore in condition for allowance for at least the same reasons discussed above with respect to independent claim 1. Likewise, claims 26-28 are dependent upon claim 25 and include all of the limitations thereof, and are therefore in condition for allowance for at least the same reasons discussed above with respect to independent claim 25.

In order to support an anticipation rejection under 35 U.S.C. 102(b), it is well established that a prior art reference must disclose each and every element of a claim. This well known rule of law is commonly referred to as the "all-elements rule." If a prior art reference fails to disclose any element of a claim, then rejection under 35 U.S.C. 102(b) is improper.

Landsberger fails to disclose each and every limitation set forth in claims 1-21 and 24-28. For at least these reasons, the Examiner has failed to establish anticipation of Applicant's claims 1-21 and 24-28 under 35 U.S.C. 102(b). Withdrawal of this rejection is therefore respectfully requested.

CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. If a telephone interview would expedite prosecution of the present application, the Examiner is invited to telephone the below-signed attorney at the telephone number listed below.

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February 28, 2008
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